IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION (STAMP) NO.7795 OF 2006

IN

B.C.C.S.C. SUIT NO.5285 OF 2004

Mr.Fabian Philip Dias & Anr. ...Applicants

Versus

Dunstan Philip Dias ...Respondent

.....

Mr.G.V.Pandya for Applicants.

Mr.A.J.Almeida for Respondent.

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CORAM: A.M.KHANWILKAR, J.

APRIL 4, 2006.

P.C.

1. Not on Board. Upon mentioning, taken on Board.

2. Although office objections have been raised, for which, Application has not been registered, however, in view of the urgency, as the matter was got produced, parties were heard through

their Counsel.

3. This Application seeks for direction to transfer the case pending before the City Civil Court, Mumbai, Court Room No.2 to any other Court. In substance, the Applicants have alleged bias against the Trial Court Judge.

4. The facts relevant to decide the point in issue can be culled out only from paragraph 3 of the Application. In my opinion, the allegations contained in Para 3 are not sufficient to show indulgence to the Applicants. The order of transfer of a case from one Trial Court Judge to another Judge is a drastic order, that too, on the allegation of bias. In that case, the facts should be self eloquent to disclose that the Applicants entertain reasonable apprehension about bias. From the assertions made in paragraph 3 of the Application, it is not possible to countenance the grievance of the Applicants before this Court. Vague allegations have been made about interruptions made by the Trial Court Judge during the recording of evidence. It is stated that when

irrelevant questions were asked by the Advocate for the Respondent, the learned Judge assisted the cross-examination to be conducted on behalf of the Respondent. No details as to the nature of question posed and why it was irrelevant and in what manner the learned Judge interfered and interrupted the proceedings to facilitate proper question to be posed to the witness to support the case of the Respondent, are spelt out in the Application. This is the main allegation on the basis of which present Application has been moved. It is not possible to accept such vague allegations.

5. I find substance in the argument of the Respondent that this is one more attempt to prolong the proceedings which have been directed to be finally concluded by end of April 2006 pursuant to the order passed by this Court on 26th April 2006 in Appeal from Order No.461 of 2005. In other words, this is not a bonafide Application taken out by the present Applicants. In other words, this proceeding is abuse of process of law.

6. On this finding, while dismissing the Application, I am inclined to impose exemplary cost of Rs.5,000/- (Rupees Five Thousand) to be paid by the Applicants to High Court Legal Services Committee within two weeks from today.

7. At this stage, Counsel for the Applicants submits that the amount of cost be reduced to Rs.2,000/- (Rupees Two Thousand). I am not inclined to accept this request.

A.M.KHANWILKAR, J.